RAQUIZA v. RAQUIZA.

[App. Juris. in Maintenance (Brown, J.) July 8, 1947]

Minor Offences Ordinance (Cap. 24) Section 37 (1) and (7) — Maintenance of wife — Husband not relieved from his duty to maintain where wife has money of her own — Amount of maintenance — Courts Ordinance, Sections 16 (aa), 18 (1) and 24 (4).

This was an appeal from the order of a Magistrate dismissing an application by a wife for a maintenance order under Section 37 (1) of the Minor Offences Ordinance. In his grounds of judgment the learned Magistrate said, firstly that in considering the evidence of the matrimonial quarrels which culminated in a separation by mutual consent he came to the conclusion that the husband was not wholly responsible for the quarrels; secondly, that the wife was capable of supporting herself and that on the facts he did not feel justified in imposing a burden on the husband.

Held, (1) that on the facts there was nothing in the evidence in this case which excused the husband from the performance of his duty to maintain his wife; (2) that a husband is not relieved from his duty to maintain his wife by the fact that she has money of her own; (3) that under Section 24 (4) of the Courts Ordinance, read in conjunction with Sections 16 (aa) and 18 (1) of that Ordinance, the Court has jurisdiction not only to hear the appeal but also to make an order for maintenance.

Cases referred to :—

(1) *Reed v. Moor,* 5 C.P. 200.

(2) *Cobb v. Cobb* (1900), P. 294.

MAINTENANCE APPEAL.

Sandy G. Pillay for the Appellant.

P. F. de Souza for the Respondent.

Brown, J. : — In this case the learned Magistrate dismissed an application by a wife for a maintenance order under section 37 (1) of Cap. 24. From the Grounds of Judgment his reasons appear to be, firstly, that in considering the evidence of the matrimonial quarrels which culminated in a separation by mutual consent he came to the conclusion that the husband "was not wholly responsible for the quarrels"; secondly, that the wife was capable of supporting herself and that on the facts he did not feel justified in imposing a burden on the husband.

Section 37 (1) of Cap. 24 provides that if a person neglects to maintain his wife the Court *may* order such person to make a monthly allowance for the maintenance of his wife. The same word "may" is used in section 5 of the Summary Jurisdiction (Married Women) Act 1895, and it has been held in England that the word "may", although permissive, is coupled with a duty to enforce the legal right of a wife who has proved her case. It is a husband's common law duty to maintain his wife, and the onus is upon him to show that for some good reason he is excused from the performance of that duty. Such a reason would be if he could show that his wife is living in adultery, or if without any sufficient reason she refuses to live with her husband [section 37 (7)]. But there is nothing in the evidence in this case which excuses him from the performance of his duty. And *Reed v. Moor*[1] is authority for saying that a husband is not relieved from his duty to maintain his wife by the fact that she has money of her own.

It seems to be clear from section 24 (4) of the Courts Ordinance, read in conjunction with sections 16 (aa) and 18 (1), that I have jurisdiction not only to hear this appeal but also to make an order for maintenance. Upon the question of amount, *Cobb v. Cobb*[2] is authority for saying that the question should be dealt with on the principles which are generally recognised and accepted in the Divorce Division as a practical guide in cases of judicial separation; namely that where there are no children the wife's allowance may be made up to one-third of the joint income. But this is not a hard and fast rule, and regard must be had to the facts of each individual case. In this case the husband's income is $280 per month, and the wife's is $260 per month. Both, according to the evidence which was given before me, have obligations in the way of aged parents whom they maintain. And although the law is clear that the husband's first obligation is to maintain his wife, if I were to allow her anything like one-third of their joint income I should be leaving the husband and his parents destitute. Fortunately the parties, with the help of their learned counsel to whom the Court is indebted for much assistance in this case, have agreed to an amount; and I should like to express my view that the appellant has adopted a most reasonable attitude in the matter.

Order : The appeal is allowed with costs and the husband must pay to the wife the monthly sum of $30/–, the first payment to be made on the 1st day of August.

Appeal Allowed.